STATEMENT OF CONSIDERATION RELATING TO
907 KAR 20:005

Department for Medicaid Services
Amended After Comments

(1) A public hearing regarding 907 KAR 20:005 was not requested and; therefore, not held.

(2) The following individuals submitted written comments regarding 907 KAR 20:005:

Name and Title	Organization/Agency/Other Entity
Cara Stewart, Health Law Fellow	Kentucky Equal Justice Center
Kathy Adams, Director of Public Policy	Children's Alliance
Teresa C. James, Commissioner	Department for Community Based Services (DCBS)

(3) The following individual from the promulgating agency responded to comments received regarding 907 KAR 20:005:

Name and Title	Organization/Agency/Other Entity
Lee Guice, Director	Department for Medicaid Services, Division of Policy and Operations
Marchetta Carmicle, Manager	Department for Medicaid Services, Division of Policy and Operations, Eligibility Policy Branch
Stuart Owen, Regulation Coordinator	Department for Medicaid Services

SUMMARY OF COMMENTS AND AGENCY'S RESPONSES

(1) Subject: Relevance of Section 5(7)(a)

(a) Comment: Teresa C. James, Commissioner of the Department for Community Based Services stated the following:

"The portions of Section 5(7)(a) appears to no longer be applicable. DCBS suggests that a period be inserted after 'are met' on line 16 and the remainder of the provision is deleted."

(b) Response: The Department for Medicaid Services (DMS) is keeping the provision in the administrative regulation as it still applies to Medicaid recipients who are not enrolled with a managed care organization.

(2) Subject: Clarifications for Coverage of Children

(a) Comment: Kathy Adams, Director of Public Policy for Children's Alliance, stated the following:

"Page 6, line 15 to 18: Section 1. (1) includes 'an individual' receiving Title IV-E benefits as a categorically-needy individual. Recommend that DMS ensure, and clarify as necessary, whether or not 'an individual' receiving Title IV-E benefits includes a youth under 'extended commitment' to the Cabinet. There is great concern, based upon the definition of 'child' set forth in 907 KAR 20:001, that foster children (recipients of IV-E benefits) currently only eligible for Medicaid coverage until they turn 18, will not again be eligible for Medicaid coverage under ACA and 907 KAR 10:075 until they turn 19. This would mean there is a year that a foster child, age 18 or over on extended commitment, or a former foster child that is age 18, would not be covered by Medicaid until they turn 19. Simply stated, it appears that there will be a year (when they are 18 years old) that a foster child or former foster child will not be covered by Medicaid."

(b) Response: The age range is established in the Affordable Care Act. Foster children who are eighteen (18) but not yet nineteen (19) qualify for health insurance coverage through the Kentucky Children's Health Insurance Premium (KCHIP) Program.

(c) Comment: Kathy Adams, Director of Public Policy for Children's Alliance, stated the following:

"Page 6, line 22: Recommend clarification of the term 'foster family care' as it is not defined in statute, or replacing the phrase with 'foster family home', which is defined by KRS 199.011 and KRS 600.020."

(d) Response: DMS is adopting the recommended term in an "amended after comments" administrative regulation.

(e) Comment: Kathy Adams, Director of Public Policy for Children's Alliance, stated the following:

"Page 6, line 22: Recommend 'nonprofit' be struck from the phrase since the Department of Community Based Services contract with both profit and nonprofit private child-caring facilities."

(f) Response: DMS is deleting the word "nonprofit" in an "amended after comments" administrative regulation.

(g) Comment: Kathy Adams, Director of Public Policy for Children's Alliance, stated the following:

Page 6, line 22: Recommend the word 'institution' be replaced with the word 'facility'

since ‘child-caring facility’ is defined by statute (KRS 199.011 and KRS 600.020) and “child-caring institution’ is not.”

(h) Response: DMS is revising the language in an “amended after comments” administrative regulation as suggested.

(i) Comment: Kathy Adams, Director of Public Policy for Children’s Alliance, stated the following:

“Page 7, line 5: Request that the phrase ‘subsidized adoption’ be defined or that a reference to applicable regulations be included.”

(j) Response: DMS thinks it is unnecessary to define the term “subsidized adoption.”

(k) Comment: Kathy Adams, Director of Public Policy for Children’s Alliance, stated the following:

“Page 17, line 7 to 10: In (1), a child in foster care is technically eligible for Medicaid if the ‘child’ meets the definition of ‘child’ defined in 907 KAR 20:001. There is great concern, based upon the definition of ‘child’ set forth in 907 KAR 20:001, that foster children (recipients of IV-E benefits) currently only eligible for Medicaid coverage until they turn 18, will not again be eligible for Medicaid coverage under ACA and 907 KAR 10:075 until they turn 19. This would mean there is a year that a foster child, age 18 or over on extended commitment, or a former foster child that is age 18, would not be covered by Medicaid until they turn 19. Simply stated, it appears that there will be a year (when they are 18 years old) that a foster child or former foster child will not be covered by Medicaid.”

(l) Response: The age range is established in the Affordable Care Act. Foster children who are eighteen (18) but not yet nineteen (19) qualify for health insurance coverage through the Kentucky Children’s Health Insurance Premium (KCHIP) Program.

(m) Comment: Kathy Adams, Director of Public Policy for Children’s Alliance, stated the following:

“Page 19, line 7 to 11: Subparagraphs (5)(c)1. and 2. both require the family to ‘report’ information however there is no penalty mentioned for their failure to report. Recommend language be added to clarify the penalty if they fail to report or provide inaccurate information, or that a reference to the established penalties, if set forth in a separate regulation, be added.”

(n) Response: DMS prefers to not insert a fixed penalty into the administrative regulation for failing to report changes in circumstances.

(o) Comment: Kathy Adams, Director of Public Policy for Children’s Alliance, stated the following:

"Page 26, line 4 and 6: Recommend that the term 'strike' be defined or a reference added to where the term is defined."

(p) Response: What constitutes a "strike" is established in paragraph (b) of the same subsection – subsection (8).

(3) Subject: Clarification for Coverage of Individuals with Intellectual Disabilities

(a) Comment: Kathy Adams, Director of Public Policy for Children's Alliance, stated the following:

"Page 7, line 1 and 2: Request clarification regarding the intent of (b) in that as written, it appears that **any child** with an intellectual disability that is placed in a PRTF, psychiatric hospital or intermediate care facility will be eligible for Medicaid. This is currently not the practice. A child is not currently determined eligible for Medicaid when they are placed in a PRTF or psychiatric hospital, especially if the child is covered by their parent's private health insurance."

(b) Response: DMS is clarifying in an "amended after comments" administrative regulation that Medicaid coverage begins with day thirty-one (31).

(c) Comment: Kathy Adams, Director of Public Policy for Children's Alliance, stated the following:

Page 17, line 7 to 10: Recommend that (1) be re-written to clarify which placement type is specific to an individual with an intellectual disability. As written, this phrase could apply to only to an intermediate care facility or to each clause separated by a comma. Recommend that 'a' be added before each clause separated by a comma, as appropriate.

(d) Response: DMS is reformatting the subsection in an "amended after comments" administrative regulation to clarify the policy. The amended language states:

"(1) **The following shall meet the requirements of a child in accordance with 907 KAR 20:001(24):**
(a) A child in foster care**;**
(b) A child in[,] a private institution**;**
(c) A child in a[,] psychiatric hospital**;**
(d) A child in a[,] psychiatric residential treatment facility**;[,]** or
(e) A child in an intermediate care facility for individuals with an intellectual disability[~~mental retardation institution~~] **[~~shall meet the definition~~ requirements of ~~child as established~~ in 907 KAR 20:001(24)]**."

(e) Comment: Kathy Adams, Director of Public Policy for Children's Alliance, stated the following:

Page 26, line 23 to Page 7,line 3: Request clarification concerning the requirement in Section 6 that limits eligibility for a patient in a mental hospital or psychiatric facility to an individual under age 21, or by exception in (b) to age 22."

(f) Response: DMS is elaborating regarding the policy, in an "amended after comments" administrative regulation by inserting a subsection (2) which states:

"**(2) In accordance with subsection (1)(c), if an individual is receiving services in a mental hospital or psychiatric facility at the time the individual reaches twenty-one (21) years of age and the services remain medically necessary for the individual the individual shall remain eligible for the services until the individual reaches age twenty-two (22) years of age.**"

(4) Subject: Clarification for Individuals Over the Age of 65

(a) Comment: Cara Stewart, Health Law Fellow for Kentucky Equal Justice Center stated the following:

"We are concerned that this section leaves out the possible Kentuckians 65 and above who are not currently eligible for Medicare. Leaving those Kentuckians out of this section would leave that population without appropriate health care options. Kentuckians eligible for Medicare are not eligible for this Medicaid Expansion, but the qualification of 64 and younger is not based on that age, but rather the presumption of Medicare eligibility. We request you clarify that those persons ineligible for Medicare but aged 65 or older and otherwise eligible are included in this expansion would be eligible for Medicaid under these new regulations. The same information is potentially found in Section 5: Technical Eligibility Requirements, that "An aged individual shall be at least sixty-five (65) years of age" and this would keep Section 12 consistent with that language including those persons."

"Suggested language:
(d) Any adult with income up to 133 percent of the federal poverty level who:
1. Does not have a dependent child under the age of nineteen (19) years; and
2.Is not otherwise eligible for Medicaid or Medicare benefits; or"

(b) Response: The Affordable Care Act and the Centers for Medicare and Medicaid Services (CMS) do not grant Medicaid eligibility for individuals sixty-five (65) and over under the new eligibility categories – "MAGI" and the "Medicaid expansion" group. No federal funding is provided for individuals sixty-five (65) and over under the new eligibility categories. The eligibility rules for individuals sixty-five (65) and over remain unchanged by federal law and by CMS. The relevant codified language appears in 42 U.S.C. 1396a(a)(10)(A)(i)(VIII).

(5) Subject: Deletion of Prior Requirement for Documents

(a) Comment: Cara Stewart, Health Law Fellow for Kentucky Equal Justice Center stated the following:

"We appreciate many of the deletions in Section 1 removing the requirement that documents be created five years prior, and the clarity of the many residency qualifiers. Thank you for including so many examples."

(b) Response: The definition of "satisfactory documentary evidence of citizenship or nationality" is now stated in a companion definitions administrative regulation – 907 KAR 20:100, Definitions for 907 KAR Chapter 20 – and no longer defined in this administrative regulation. In 907 KAR 20:001, DMS defined the term by referring to the relevant federal law – 42 U.S.C. 1396b(x)(3)(A) rather than list the detailed requirements as the federal law may evolve over time. The five (5)-year requirement still exists except for "lawfully residing" non-citizens under nineteen (19) years of age. DMS has opted to exempt those individuals – as allowed by federal law. As those categories are not addressed in this administrative regulation, DMS is inserting language in an "amended after comments" version of 907 KAR 20:100 (Modified Adjusted Gross Income Medicaid eligibility standards) to clarify that those individuals are exempt from the documentation of citizenship requirements.

SUMMARY OF STATEMENT OF CONSIDERATION
AND
ACTION TAKEN BY PROMULGATING ADMINISTRATIVE BODY

The Department for Medicaid Services (DMS) has considered the comments received regarding 907 KAR 20:005 and is amending the administrative regulation as follows:

Page 6
Section 1(2)(a)
Line 22
After "family", insert "<u>home</u>".
Delete "care".

After "private", delete "nonprofit".

After "child-caring", insert "<u>facility</u>".
Delete "institution".

Page 7
Section 1(2)(b)
Line 2
After "disability", insert the following:
<u>beginning with day thirty-one (31) of the child's stay in the psychiatric hospital, psychiatric residential treatment facility, or intermediate care</u>

facility for individuals with an intellectual disability

Page 9
Section 1(3)(c)3.
Line 19
After “of an”, delete “institutionalized”.

Page 17
Section 5(1)
Line 7
After “(1)”, insert the following:
The following shall meet the requirements of a child in accordance with 907 KAR 20:001, Section 1(24):
(a)

After “care”, insert a semi-colon, a return and “A child in”.
Delete the comma.

After “institution”, insert a semi-colon, a return and the following:
(c) A child in a
Delete the comma.

After “hospital”, insert a semi-colon, a return and the following:
(d) A child in a.
Delete the comma.

Line 8
After “treatment facility”, insert a semi-colon.
Delete the comma.

After “or”, insert a return and “(e) A child in”.

Line 9
After “~~institution~~], delete the following:

shall meet the definition requirements of child as established in 907 KAR 20:001, Section 1(24)

Page 26
Section 6
Line 18
After “Status.”, insert “(1)”.

Page 26
Sections 6(1), (2), and (3)
Lines 20, 22, and 23

Renumber these three (3) subsections by inserting “(a)”, “(b)”, and “(c)”, respectively, and by deleting “(1)”, “(2)”, and “(3)”, respectively.

Page 27
Sections 6(3)(a), (b), and (c)
Lines 1, 2, and 4
Renumber these three (3) paragraphs by inserting “1.”, “2.”, and “3.”, respectively, and by deleting “(a)”, “(b)”, and “(c)”, respectively.

Page 27
Sections 6(4)
Line 5
Renumber this subsection by inserting “(d)” and by deleting “(4)”.

Line 6
After “sixty-five (65).”, insert a return and the following:
(2) In accordance with subsection (1)(c), if an individual is receiving services in a mental hospital or psychiatric facility at the time the individual reaches twenty-one (21) years of age and the services remain medically necessary for the individual the individual shall remain eligible for the services until the individual reaches age twenty-two (22) years of age.

Page 29
Section 12(1)
Line 23
After “Applicability.”, delete “(1)”.

Page 30
Section 12(1)(a)
Line 2
Renumber this paragraph by inserting “(1)” and by deleting “(a)”.

Page 30
Section 12(1)(a)1, 2, and 3
Lines 3, 4, and 5
Renumber these three subparagraphs by inserting “(a)”, “(b)”, and “(c)”, respectively, and by deleting “1.”, “2.”, and “3.”, respectively.

Page 30
Section 12(1)(b) and (b)1
Line 6
Renumber this paragraph by inserting “(2)” and by deleting “(b)”.

Lines 6 and 7
After “individual”, delete the colon, the return, and “1.”.

Line 7
After “determined”, insert a colon, a return, and “(a)”.

Line 8
After “standard”, insert “pursuant to 907 KAR 20:100”.

After “; or”, insert a return and “(b) Pursuant to 907 KAR 20:075”

Page 30
Section 12(1)(b)2 and 12(2)
Lines 9 through 23
Delete Section 12(1)(b)2 and Section 12(2) in their entirety.